

Decision No. 27259.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation by the Commission on its own Motion into the rates, rules, regulations, charges, allowances, contracts, practices, operations and schedules, or any of them, of The Atchison, Topeka and Santa Fe Railway Company, Coast Line Express, Coast Truck Line, H. Frasher Truck Line, Highway Transport Company, Intercity Transport Lines, Inc., Keystone Express System, Motor Freight Terminal Company, Inc., Pacific Motor Transport Company, Pacific Motor Trucking Company, Richards Trucking and Warehouse Company, The River Lines, Sacramento Northern Railway, Tidewater Southern Railway, Valley Express Co., Valley Motor Lines, Inc., and The Western Pacific Railroad Company.

ORIGINAL

Case No. 3773.

J. F. Vizzard, for Draymen's Association, San Francisco, and for the Federated Terminals.
Berne Levy and Gerald E. Duffy, for The Atchison, Topeka and Santa Fe Railway Company.
John Curry, for J. McCarty & Son.
L. N. Bradshaw and H. E. Poulterer, for The Western Pacific Railroad Company, Sacramento Northern Railway, and Tidewater Southern Railway.
W. S. Johnson, for H. Frasher Truck Line, Valley Express Co., and Valley Motor Lines, Inc.
C. G. Anthony, for Motor Freight Terminal Company, Inc.
E. J. Foulds, for Southern Pacific Company, Pacific Motor Transport Company and Pacific Motor Trucking Company.
Hal Remington, for San Francisco Chamber of Commerce.
L. I. McKim, for The River Lines.
Frank M. Hill, for Fresno Traffic Association, and Fresno County Chamber of Commerce.
C. G. Wellman, for Highway Transport Company.
Edwin G. Wilcox, for Oakland Chamber of Commerce.
C. S. McLenegan, for Intercity Transport Lines, Inc.
E. L. McConnell, for Coast Line Express.
R. E. Wedekind, for Pacific Motor Transport Company.
H. J. Bischoff, for Coast Truck Line.
Libby & Sherwin, by Warren E. Libby, for L. R. Kagarise.

SEAVEY, Commissioner:

O P I N I O N

This proceeding was instituted for the purpose of determining the lawfulness and propriety of respondents' practices (1) of making allowances to shippers and consignees or their agents for delivering to and/or picking up at the carriers' depots, freight on which store door rates are provided, and (2) of performing such service under contract with other parties at rates different than those allowed shippers and/or consignees. Upon petition of certain of the respondents such matters as split pickups and deliveries, rates based on tonnage shipped during a designated period, carriers acting as shippers' agents or freight forwarders, indexing of stations, posting of tariffs and extension of credit were also considered.

Public hearings were had at San Francisco and Los Angeles. The matter was submitted on briefs.

ALLOWANCES

Respondents transport property either via rail, highway or water lines of their own or as express corporations operating over the lines of other common carriers under rates which include both pickup and delivery service. The pickup and delivery service is performed (1) by or on behalf of the carrier, or (2) by the shipper.¹ The applicable tariffs provide that whenever the shipper performs the service an allowance generally amounting to 5 cents per 100 pounds will be made for the pickup and a like amount for the delivery. When the shipper does not elect to perform his own pickup or delivery, respondents either do it themselves or have it done

¹ Throughout this opinion the term "shipper" is used to designate either a shipper or consignee, or a shipper's or consignee's agent.

for them by draymen with whom they have contracts.²

The manner in which respondents' rates are now published is not entirely satisfactory. Certain shippers complain that it entails a considerable amount of bookkeeping and checking to determine whether or not the allowance has been properly made. It also involves difficult accounting on the part of the carriers, and raises complex questions of tariff interpretation. It has been suggested that respondents maintain three sets of rates: first, the so-called 100 per cent. rates, which include both pickup and delivery; second, rates somewhat lower which include either pickup or delivery but not both; and third, rates still lower and including neither pickup nor delivery. It seems that this is the proper method of publication and that it should be adopted by the respondents.

CONTRACTS

Under the contracts heretofore referred to, the amount paid the drayman frequently exceeds and is in no instance less than 5 cents per 100 pounds. Thus the net revenue accruing to the carrier for like services varies according to whether pickup and delivery is performed by or on its or the shipper's behalf. The complaint arises however not because of the net revenue accruing to the carrier but because of an alleged discrimination among shippers and the effect the practice has upon the routing of shipments.

That the present practices interfere with the natural movement of traffic and at least afford opportunity for extending preferences to favored shippers, the record clearly shows. For example, a drayage concern under contract with one of respondents

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In some instances the services are performed by draymen who operate under sub-contracts entered into with the drayman holding the main contract. The practice of carriers performing the pickup and delivery service directly with their own equipment is not here in question.

made a sub-contract with another concern for the draying of the products of one particular shipper. It is admitted that the fact that the sub-contractor "more or less controlled the routing" "had some bearing" upon the making of the contract. In other instances respondents have contracts with warehouse companies in Los Angeles under which they pay these companies amounts in excess of the amounts paid other warehousemen or shippers. These contracts are separate and apart from respondents' regular drayage contracts. No attempt was made to defend this practice. Apparently it was started by some carrier in an attempt to gain an advantage over its competitors. They however, seeing their tonnage from the warehouses dwindle, retaliated in like manner, and the practice thus grew into more or less open bidding, the carrier offering the greatest allowance securing the traffic. This does not affect alone tonnage owned by the warehouses or entrusted to them without routing instructions, as according to the testimony certain warehouses even disregard routing instructions issued by the owners of the goods in order to secure the benefit of the greater allowance. An attempt was made to distinguish between the practice just described as it exists at Los Angeles and that obtaining elsewhere. While probably not indulged in to the same degree, the record shows that the practices obtaining at San Francisco and probably at certain other points do not differ greatly from those at Los Angeles.

It is apparent that unless these practices are changed, carriers in their struggle for tonnage will resort to competitive bidding for merchandise through the device of contractual arrangements for draying, and that shippers operating through favored warehouses will maintain undue advantages. Filed tariffs will lose their importance and chaotic transportation conditions will

inevitably follow.

It has been suggested that the Commission extend the scope of its General Order No. 67 so as to have it embrace all carriers operating a pickup and delivery service.³ While this would undoubtedly remove some of the objections here raised, the record shows that it would throw an undue burden on carriers not owning automotive equipment. If the order as it now stands subjects any carrier to an undue disadvantage or handicap, the injured carrier should petition the Commission for relief.

Certain of the objectionable features hereinbefore discussed would be overcome should respondents maintain but one set of rates, namely pickup and delivery rates from which they would make no allowance even though shippers elected to do their own drayage to and from the carrier's terminal. This method has been employed by the Railway Express Agency for many years, with apparent satisfaction, and merits respondents' earnest consideration. On the record here made however the Commission is not justified in requiring them to adopt this plan if they are not convinced of its advisability.⁴

However, even this would cure but a part of the evils of the present system. To remove the improprieties hereinabove refer-

³ This General Order provides that transportation companies as defined in the Auto Stage and Truck Act shall either own their equipment or lease such equipment for a specified amount on a trip or term basis, the leasing of equipment not to include the services of a driver.

⁴ Certain of the respondents favor this plan. Their experience has been that shippers generally deliver to them those shipments which are easy to handle, heavy in proportion to bulk, require a minimum of hauling, but call upon them for transportation of small bulky commodities requiring drayage difficult either because of distance or congestion of streets. Expensive accounting methods would likewise be eliminated. Other respondents, however, particularly the Santa Fe, contend that this plan would increase their cost of operation.

red to the Commission should require respondents to file with it all drayage contracts entered into and should refuse to accept any contract in connection with which it is not shown by statement under oath that the drayman has no interest whatsoever in the volume of the charges paid by the shipper and has no control either directly or indirectly over the routing of the shipment.⁵

SPLIT PICKUPS AND DELIVERIES

Several of the respondents publish rates permitting shipments to be delivered to more than one consignee and destination. Others do not do so, and contend that the practice is discriminatory, preferential, prejudicial, violative of the long and short haul provisions of Section 21 Article XII of the State Constitution, and that it breaks down through rates and practices. Justification for making lower rates for the transportation of freight in car or truck loads than in less carload or less truck load lots has always been recognized. Recently to meet special situations certain carriers have published less truck load rates varying with the size of individual shipments. The rates here in review, however, go further; they extend to a shipper making a multiplicity of shipments the same rates per 100 pounds as are accorded others shipping an equal aggregate volume of property to but one consignee and destination, and a lower rate than others pay for the transportation of individual shipments of the same size. There is little contention that rates published in this manner are desirable in and of them-

⁵ This proceeding embraces only those carriers whose tariffs provide for an allowance to be made in the published tariffs. Numerous other carriers accomplish substantially the same result by maintaining two sets of rates, one of which exceeds the other by an amount comparable to an allowance. The order to be promulgated should naturally extend to such carriers.

selves or that they are justifiable from a cost standpoint. The carriers favoring their continuance do so primarily on the ground that they are necessary to meet competition. On this basis they can be justified. In no event should they be permitted, however, unless some penalty charge is made.

RATES BASED UPON TONNAGE SHIPPED
DURING A DESIGNATED PERIOD

Certain respondents also publish rates dependent upon the amount of tonnage forwarded by one shipper during a designated period, usually one month. Like split delivery rates, these monthly rates are not defended from a cost standpoint and are apparently looked upon with disapproval even by the carriers that now maintain them.⁶ The reason for their publication is summed up by a witness as follows:

"The reason for that rule in that particular district was that those people require us to file a rate much lower than we thought was practical, and having had that experience with them, we didn't want them to have a rate filed that they could use any day they chose, and ship by wild-catters on days when they had some tonnage, so in order to force them to ship a sizable amount of tonnage by the month with us, we gave them that rate."

While this explains the reason for the practice, it cannot be said to justify it under all conditions. Like the split pickup and delivery rates it undoubtedly opens the door to discrimination and disrupts stabilized practices. It should not be permitted except in extraordinary cases, and then only upon a proper showing before, and specific authorization by, the Commission.

⁶ This is not true as to the milk and cream traffic of the Southern Pacific Company, which carrier participated in this proceeding at its own request. It was strongly urged both by the Southern Pacific Company and by interested shippers that established rates based on aggregate monthly tonnage be not disturbed. Competition of unregulated transportation companies, the perishable nature of the property and the needs of the industry were advanced in support of this request.

CARRIERS ACTING AS SHIPPERS' AGENTS
OR FREIGHT FORWARDERS

Apparently certain carriers, in the hope of holding or attracting tonnage, perform various services as agents of shippers. Under the provisions of Rule 23 of the Western Classification,⁷ to which most of them are subject, carriers are prohibited from acting as agents of shippers or consignees for the assembling or distribution of freight. This rule has been in effect for more than twenty years and seems a proper rule to adopt here. It should be made to embrace all these carriers and should be extended to prohibit them from acting as agents for shippers for any purpose not provided for in published tariffs.

TARIFFS

The record shows that it is frequently difficult to determine the rates of certain carriers for the reason that their schedules are available at but a few places. Section 14 of the Public Utilities Act requires that schedules or tariffs of carriers showing all rates, fares or charges or rules and regulations affecting rates, fares or charges -

"be kept by every such carrier readily accessible to and for inspection by the public in every station or office of such carrier where passengers or property are respectively received for transportation when such station or office is in charge of an agent and in every station or office of such carrier where * * * bills of lading or waybills or receipts for property are issued."

Respondents not subject to the Public Utilities Act are governed by the Commission's General Order 80, which contains a rule to like effect. A strict compliance with these rules should be observed.

The Commission's rules also require that tariffs of cer-

⁷ C.R.C. No. 538 of F. W. Gomph, Agent.

tain classes of carriers contain a geographical list of all points served or give reference by C.R.C. number to a publication containing such information. The need for such information is obvious. It should be required of all carriers alike.

CREDIT

Many diverging views were expressed regarding the extension of credit for freight charges. Some are of the opinion that they should be free to extend credit without limit, and others that immediate payment should be required. Extension of unlimited credit results in the granting of free transportation to irresponsible shippers and confers an advantage upon the one who is dilatory, as against one who settles his bills promptly. On the other hand competitive factors and the needs of shippers seem to require that some credit be extended. On this record a period not exceeding twenty days appears reasonable. Before any credit is extended, however, carriers should take reasonable steps to see that the party receiving the credit is fully responsible.

A proposed General Order covering the matters herein discussed is attached hereto as an appendix. After giving opportunity to interested parties to comment thereon and making such changes as may then appear advisable, it should be adopted by the Commission.

The following form of order is recommended:

O R D E R

This matter having been duly heard and submitted,

IT IS HEREBY ORDERED that the Secretary of this Commission serve upon all common carriers subject to the Commission's jurisdiction performing a pickup and delivery service within this State, and

upon any other parties known to be interested, a copy of the proposed General Order requesting them to submit for the Commission's consideration, within thirty (30) days from the date hereof, any comments they may wish to make.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 6th day of August, 1934.

C. Seavey
Leon Overman
M. A. Carr
M. B. Harris
W. H. [unclear]
Commissioners.

APPENDIX

General Order No. _____.

Note: This General Order contains matter supplemental to that contained in certain other General Orders but does not cancel any that are now in effect.

RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

RULES AND REGULATIONS

Governing the Transportation of Property by all
Common Carriers

Adopted _____, 1934.

Effective _____, 1934.

Authorized by Decision No. _____, Case No. 3773.

IT IS HEREBY ORDERED that on and after the effective date of this order the following rules shall be in full force and effect:

1. Carriers may not make any allowances to shippers or receivers of freight or to shippers' or receivers' agents. Should a carrier elect to offer to the public at different rates more than one class of service, as for example, store-door-to-store-door, store-door on the one hand and depot on the other, and depot-to-depot service, the rates therefor must be separately stated. This may be done either by publishing the rates specifically or by providing by rule a basis for their construction.

2. No common carrier shall directly or indirectly make any allowance or pay any money to any one for services rendered or to be rendered in connection with the transportation of property

between points within this State unless it shall first have filed with and had accepted by this Commission a copy of a bona fide contract entered into with a party certifying under oath that it is in no wise interested in the volume of the transportation charges and has no control over the routing of the shipment; provided that this prohibition shall not apply to moneys paid to a carrier's bona fide employees or expended in the purchase of materials or the leasing of equipment in instances where said lease excludes the services of a driver or operator.

3. Rates shown in carriers' tariffs shall apply for the transportation of single shipments only¹ excepting (1) that whenever a carrier finds it necessary to maintain rates permitting more than one consignor, point of origin, consignee or destination, it may do so provided a charge of not less than twenty-five cents (25¢) is made for each consignor and/or point of origin or consignee and/or destination exceeding one, and (2) that in unusual cases upon a proper showing before and authorization by this Commission rates dependent upon the aggregate tonnage forwarded or received during a month or other suitable period may be established or maintained.

4. Carriers or their agents must not act as agents of shippers or consignees for the assembling or distribution of property, or for any other purpose not specifically authorized by their lawfully filed tariffs.

5. All tariffs naming rates shall list in geographical order all points served by the carrier or carriers whose rates are

¹ A single shipment is a lot received from one shipper, on one shipping order or bill of lading, at one point, at one time, for one consignee, and one destination.

contained therein and shall designate the points at which the carrier maintains an agent, or shall make reference by C.R.C. number to publications filed with this Commission containing the aforesaid information.

6. All charges for transportation must be paid before possession of the property is relinquished, excepting that where credit has been established by bond or other satisfactory guarantee to the carrier credit may be allowed for a period not exceeding twenty (20) days.

Approved and dated at San Francisco, California, this

17 day of _____, 1934.